

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA for the use of  
WALTHAM LIME & CEMENT COMPANY,  
Plaintiff,

v.

Civil Action No. 1:05-cv-10138 NG

PEABODY CONSTRUCTION CO., INC., ODF  
CONTRACTING CO., INC.,  
HOON COMPANIES, INC. and TRAVELERS  
CASUALTY AND SURETY COMPANY OF  
AMERICA,  
Defendants.

**UNOPPOSED MOTION REQUESTING EXTENSION OF TIME TO RESPOND TO  
COMPLAINT OF WALTHAM LIME & CEMENT COMPANY**

Defendants Travelers Casualty and Surety Company of America ("Travelers"), Peabody Construction Co., Inc. ("Peabody"), and Hoon Companies, Inc. ("Hoon") (collectively "Movants") hereby move this Court for an extension of time, through and including June 30, 2005, to file their response to the Complaint of Waltham Lime & Cement Company in the above-captioned proceeding. In support of this motion, Movants state as follows:

Plaintiff Waltham Lime & Cement Company ("Waltham Lime") initially brought its claims against Defendants in the Middlesex Superior Court (C.A. 03-01407) seeking, among other things, recovery on a payment bond. On or about January 10, 2005, the Middlesex Superior Court (Lauriat, J.) dismissed Waltham Lime's payment bond claims on the grounds that the construction project for which the payment bond was issued was a "public work or public building of the Federal Government" as defined under the

Miller Act, 40 U.S.C. § 3131, *et seq.* As the District Court has exclusive jurisdiction over claims under 40 U.S.C. § 3133, Waltham Lime re-filed its dismissed claims in this Court on or about January 21, 2005.

Pursuant to Superior Court Rule 9A, Waltham Lime recently served Movants with a Motion for Reconsideration in connection with the Middlesex Superior Court's ruling dismissing its payment bond claims. Movants' Opposition is due to be served on June 1, 2005, with both the Motion and Opposition to be thereafter filed with the Middlesex Superior Court. In the event Waltham Lime is successful in securing reconsideration of this issue, it may affect those claims being asserted in this Court. As such, Movants request a further extension to their obligation to respond to Waltham Lime's Complaint in this action to allow the Superior Court to rule on Waltham Lime's motion for reconsideration. In the event Waltham Lime is not successful in securing reconsideration, Movants will respond to Waltham Lime's Complaint herein.

Waltham Lime does not oppose the relief requested herein.

WHEREFORE, Movants respectfully request that this Honorable Court grant Travelers, Peabody and Hoon an extension of time, through and including June 30, 2005, to file their response to the Complaint of Waltham Lime.

Respectfully Submitted,  
**TRAVELERS CASUALTY & SURETY  
COMPANY OF AMERICA**

By its attorneys,

/s/ Jonathan C. Burwood

---

Bradford R. Carver, BBO #565396  
Jonathan C. Burwood, BBO #643674  
Cetrulo & Capone LLP  
Two Seaport Lane, 10<sup>th</sup> Floor  
Boston, MA 02110  
(617) 217-5500

**PEABODY CONSTRUCTION CO.,  
INC.; HOON COMPANIES, INC.**

By its attorneys,

/s/ Charles A. Plunkett

---

Charles A. Plunkett, Esq., BBO #547714  
Vena, Riley, Deptula, LLP  
250 Summer Street, 2<sup>nd</sup> Floor  
Boston, MA 02210

Date: May 26, 2005

#### Local Rule 7.1 Certificate

I, Jonathan Burwood, hereby certify that I have consulted with counsel for Waltham Lime & Cement Company, David B. Hobbie, on this Motion Requesting Extension of Time To Respond To Complaint, and that Mr. Hobbie indicated that he did not oppose this Motion, by electronic communication on May 25, 2005.

/s/ Jonathan C. Burwood

---

Jonathan C. Burwood

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA for the use of  
WALTHAM LIME & CEMENT COMPANY,  
Plaintiff,

v.

Civil Action No. 1:05-cv-10138 NG

PEABODY CONSTRUCTION CO., INC., ODF  
CONTRACTING CO., INC.,  
HOON COMPANIES, INC. and TRAVELERS  
CASUALTY AND SURETY COMPANY OF  
AMERICA,  
Defendants.

**ORDER ON UNOPPOSED MOTION REQUESTING EXTENSION OF TIME TO  
RESPOND TO COMPLAINT OF  
WALTHAM LIME & CEMENT COMPANY**

Upon Travelers Casualty and Surety Company of America, Peabody Construction Co., Inc., and Hoon Companies, Inc.'s Unopposed Motion Requesting Extension of Time to File Response to the Complaint of Plaintiff Waltham Lime and Cement Company (the "Motion") for good and sufficient cause, it is hereby ORDERED, ADJUDGED and DECREED that:

- A. The Motion is granted; and
- B. Movants shall respond to the Complaint on or before June 30, 2005.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Nancy Gertner, Judge  
United States District Court  
for the District of Massachusetts